
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA,
Plaintiff,

v.

DANIEL DUANE BATES,
Defendant.

**MEMORANDUM DECISION AND
ORDER DENYING MOTION TO
MODIFY SENTENCE**

Case No. 2:17-cr-00595-DN

District Judge David Nuffer

Defendant Daniel Duane Bates seeks to modify his sentence to include credit for his pretrial detention.¹ Because only the Bureau of Prisons has the power to grant sentence credit in the first instance, jurisdiction is lacking. Therefore, Mr. Bates's Motion² is DENIED.

BACKGROUND

Mr. Bates was arrested on September 6, 2017, and originally charged in state court.³ He was indicted on federal charges on October 11, 2017.⁴ Mr. Bates was then writted out of state custody⁵ and made his initial appearance on the federal charges on October 18, 2017.⁶ Mr. Bates elected to remain in federal custody,⁷ and was sentenced on March 28, 2018.⁸

¹ Motion to Modify Sentence (“Motion”), docket no. 43, filed Aug. 14, 2019.

² *Id.*

³ *Id.* at 1.

⁴ Indictment, docket no. 1, filed Oct. 11, 2017.

⁵ Writ of Habeas Corpus Ad Prosequendum, docket no. 5, filed Oct. 13, 2017.

⁶ Minute Entry for Proceedings Held Before Magistrate Judge Brooke C. Wells, docket no. 6, filed Oct. 18, 2017.

⁷ *Id.*

⁸ Minute Entry for Proceedings Held Before Judge David Nuffer, docket no. 38, filed Mar. 28, 2018.

At the time of his sentencing, Mr. Bates had three pending state cases.⁹ He was sentenced on his federal charges to 42 months in the custody of the Bureau of Prisons to run concurrently with his state cases.¹⁰ The 42-month sentence was a downward variance from his guideline range of 51 to 63 months.¹¹ This variation was based, in part, on complications that existed with Mr. Bates's state cases that created uncertainty as to whether he would receive credit for his pretrial detention.¹²

Mr. Bates has since learned that the Bureau of Prisons elected to count his time served only from his March 28, 2018 sentencing date.¹³ He now seeks to modify his sentence to receive credit for the time he served in pretrial detention from his September 6, 2017 arrest.¹⁴

DISCUSSION

“A defendant convicted of a federal crime has a right under [18 U.S.C. § 3585\(b\)](#) to receive credit for certain time spent in official detention before his sentence begins.”¹⁵ However, the Supreme Court has held that “§ 3585(b) does not authorize a district court to compute the credit at sentencing.”¹⁶ Rather, “[a]fter a district court sentences a federal offender, the Attorney General, through the [Bureau of Prisons], has the responsibility for administering the sentence.”¹⁷ “Because the offender has a right to certain jail-time credit under § 3585(b), and because the district court cannot determine the amount of the credit at sentencing, the Attorney

⁹ Motion at 2.

¹⁰ Judgement in a Criminal Case at 2, [docket no. 39](#), filed Mar. 29, 2018.

¹¹ Sentencing Hearing Transcript at 12:10-24, [docket no. 45](#), filed Aug. 19, 2019.

¹² *Id.*

¹³ Motion at 2.

¹⁴ *Id.*

¹⁵ *United States v. Wilson*, 503 U.S. 329, 330 (1992).

¹⁶ *Id.* at 334.

¹⁷ *Id.* at 335 (citing [18 U.S.C. § 3621\(a\)](#)).

General has no choice but to make the determination as an administrative matter when imprisoning the defendant.”¹⁸ Therefore, “a district court is without jurisdiction to award a sentence credit at sentencing.”¹⁹

“In order to challenge the calculation of credit for time served, [a d]efendant must first exhaust all of his administrative remedies with the Bureau of Prisons before he seeks judicial review regarding the calculation of credit for time served.”²⁰ “Once [the defendant] has done so, if [un]satisfied with the Bureau of Prisons’ resolution of [the] request for sentence credit, [the defendant] may raise the issue by filing a petition under [28 U.S.C. § 2241](#).²¹ And “such petition must be filed in the judicial district where [the d]efendant is held in custody at the time such a petition is filed.”²²

Because Mr. Bates seeks to modify his sentence to receive credit for time served,²³ and the district court lacks jurisdiction to grant such credit,²⁴ Mr. Bates’s Motion is DENIED.

Regardless, the issue of Mr. Bates’s pretrial detention was already addressed at his sentencing hearing. There, counsel properly argued for a downward variance from the guideline sentencing range due to complications with Mr. Bates’s state cases that created uncertainty as to whether he would receive credit for his pretrial detention.²⁵ While the district court lacks jurisdiction to grant credit for time served, it may factor a defendant’s pretrial detention into its

¹⁸ *Id.*

¹⁹ *United States v. Jenkins*, 38 F.3d 1143, 1144 (10th Cir. 1994).

²⁰ *United States v. Chavez*, No. CR 09-3086 RB, 2011 WL 13189834, *1 (D. N.M. Jan. 11, 2011) (citing *Montez v. McKinna*, 208 F.3d 862, 865 (10th Cir. 2000)).

²¹ *Id.* (citing *Montez*, 208 F.3d at 865).

²² *Id.* (citing [28 U.S.C. § 2241\(a\)](#)).

²³ Motion at 2.

²⁴ *Jenkins*, 38 F.3d at 1144.

²⁵ Sentencing Hearing Transcript at 6:21-7:21, 9:22-10:15.

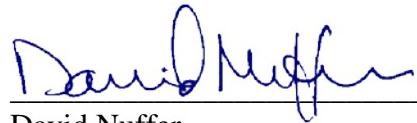
sentencing calculation. This occurred when Mr. Bates received a downward variance from his guideline sentencing range.²⁶ Effectively, Mr. Bates received credit for the time he served in pretrial detention when he received the downward variance.

ORDER

IT IS HEREBY ORDERED that Defendant's Motion²⁷ is DENIED.

Signed August 21, 2019.

BY THE COURT



David Nuffer
United States District Judge

²⁶ Sentencing Hearing Transcript at 12:10-24.

²⁷ Docket no. 43, filed Aug. 14, 2019